

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

IN RE:	§	
	§	
GARY RALPH CRITES AND	§	CASE NO. 01-51061-RLJ-7
MURIEL JEANNE CRITES,	§	
	§	
DEBTORS	§	

MEMORANDUM OPINION AND ORDER

Before the court is the Motion for Final Allowance of Compensation and Reimbursement of Expenses filed by Goodrich, Postnikoff & Albertson, L.L.P. (the "Motion"). Goodrich, Postnikoff & Albertson, L.L.P. ("GP&A") requests approval of fees of \$38,164 and expenses of \$8,187.83 covering the period of August 1, 2002 through August 29, 2003. GP&A also seeks final approval of interim fees and expenses previously approved in the amounts of \$49,387.50 and \$5,601.75, respectively. The fees requested for the August 1, 2002 through August 29, 2003 period concern the latter part of the debtors' Chapter 11 proceeding. The debtors' case was converted to Chapter 7 on August 28, 2003. The debtors have objected to the Motion. Neither the Chapter 7 Trustee nor any creditor has objected to the requested fees and expenses. A hearing on the Motion was held April 26, 2004.

The determination of compensation and reimbursement of expenses under section 330(a) of the Code (11 U.S.C.) for professional persons employed under section 327 constitutes a core matter over which this court has jurisdiction to enter a final order. 28 U.S.C. §§ 157(b)(2)(A) and (O) and 1334. This memorandum opinion contains the court's findings of fact and conclusions of law required by Bankruptcy Rules 7052 and 9014.

Generally, the debtors contend that, in light of the fees and expenses already received by GP&A, the amount requested for the latter part of their Chapter 11 proceeding should be disallowed. The debtors also complain that they received no notice of the motion or an itemization of the work performed by GP&A under the final fee application. GP&A submits that the debtors have no standing to object because the claims in the case exceed the value of the estate's assets and the debtors, therefore, have nothing at stake. Regardless, the court bears the responsibility of determining the appropriateness of all compensation and reimbursement of expenses sought by a debtor's attorney, even in the absence of an objection. *See Gardere & Wynn v. Turoff (In re Hunt)*, 196 B.R. 356, 359 (N.D. Tex. 1996). The court considers the points raised by the debtors.

As noted, the court previously approved interim fees and expenses of \$54,989.25. GP&A held a prepetition retainer of \$30,000, of which \$8,600.40 was paid for prepetition services and the balance of \$21,399.60 applied against the approved interim fees and expenses. In addition, the debtors reimbursed GP&A for an advance of \$3,745; when factored with the present request, the resulting balance owing is \$76,196.48. A summary of the fees and expenses charged during this bankruptcy, with a breakdown of the time spent and rates charged, is set forth on a copy of GP&A Exhibit 1 attached hereto. As reflected on Exhibit 1, the time expended for the period covered by the final application is 264.10 hours. The average billing rate is \$144.51.

Before addressing the reasonableness of the fees and expenses, the court first addresses the debtors' claim that they received no notice of the fee application or an itemization of GP&A's services. In this regard, the court notes that the Motion was electronically served on all those individuals registered to receive filings in this bankruptcy case. Kevin Willhelm, debtors' counsel,

should have therefore received the Motion. The exhibits attached to the Motion set forth an itemization of the services and include a description of the specific services provided by date, with the time expended, and a categorization of the fees. GP&A filed a notice of the Motion setting forth the deadline for filing objections and the hearing date for the Motion. The notice states that a copy of the application (the Motion) could be viewed at the bankruptcy court during normal business hours or obtained from GP&A. This notice, according to the certificate of service, was mailed to a service list that includes the debtors and debtors' counsel. The debtors and their counsel apparently failed to avail themselves of the opportunity to review the motion and the itemization of the fees and expenses. The court is satisfied that the debtors received adequate notice and opportunity to review the Motion and the itemization of the requested fees and expenses.

Concerning the reasonableness of the fees, the debtors' objection hinges on their contention that GP&A was paid enough prior to the time covered by the Motion. The debtors have not, however, addressed any area of services provided that were unnecessary. Neither the Trustee nor any creditor has complained of the time expended or the rates charged as set forth in the itemization of fees. Indeed, the average rate of \$144.51 is certainly within the range of hourly rates approved by this court. In fact, this rate is on the low side for debtor's counsel in a Chapter 11 case.

The court has reviewed the itemization of fees for the period covered by the Motion. The bulk of the time pertains to work performed in preparing the plan and disclosure statement, the handling of stay proceedings, and generally assisting the debtors in case administration matters. The court found no examples of work performed that benefitted only the debtors, as opposed to the bankruptcy estate. *See In re Hunt*, 196 B.R. 356, 359 (N. D. Tex. 1996); *In re Bennett*, 133

B.R. 374, 378 (Bankr. N. D. Tex. 1991) (“actual, necessary services means services that benefit the debtor’s estate, not the debtor”). The court has not been provided with any basis to question the necessity of the time expended.

The only area of inquiry concerns whether the entirety of the fees should be approved given that this is a failed Chapter 11 case. The ultimate success on the merits is a factor to consider in determining the reasonableness of the fees by debtors’ counsel. See *Cobb v. Miller*, 818 F.2d 1227, 1233 (5th Cir. 1987) (“the most critical factor [in determining the amount of attorney’s fees] is the degree of success obtained.”) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983)). At the hearing, neither the debtors nor GP&A addressed the reasons for the failed Chapter 11. GP&A has the burden to show that its requested compensation is reasonable and was necessary for the proper administration of the estate. *In re Beverly Mfg. Corp.*, 841 F.2d 365 (11th Cir. 1988); *In re U.S. Golf Corp.*, 639 F.2d 1197, 1207 (5th Cir. 1981); *In re Navis Realty, Inc.*, 126 B.R. 137, 145 (Bankr. E.D. N.Y. 1991). In light of the ultimate lack of success in this case, GP&A should have offered, at a minimum, some explanation and justification for the extensive services provided in preparing a plan and disclosure statement. GP&A failed to do this. GP&A requests \$16,047.50 for preparation of the plan and disclosure statement. Without any explanation from counsel, this strikes the court as excessive. The court finds that approximately half of these fees should be disallowed. The court, therefore, disallows fees of \$8,000. No question was raised concerning the requested reimbursement of expenses.


Upon the foregoing, it is

ORDERED that Goodrich, Postnikoff & Albertson, L.L.P. is awarded fees on its final

application of \$30,164 and expenses of \$8,187.83. It is further

ORDERED that Goodrich, Postnikoff & Albertson, L.L.P. is awarded total fees and expenses in this case (after credit for the applied retainer of \$21,399.60 and reimbursement of advance of \$3,745) of \$68,196.48.

SIGNED May 5, 2004.



ROBERT L. JONES
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

IN RE:

GARY RALPH CRITES and wife,
MURIEL JEANNE CRITES,
dba CRITES TRUCKING,

Debtors.

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CASE NO.: 01- 51061-RLJ-11

SUMMARY SHEET
(Exhibit "A")

Fees Previously Requested: \$ 49,387.50
Fees Previously Awarded: \$ 49,387.50

Expenses Previously Requested: \$ 5,601.75
Expenses Previously Awarded: \$ 5,601.75

Retainer Paid: \$ 21,399.60

NAME OF APPLICANT:
Goodrich Postnikoff & Albertson, LLP

ROLE IN THE CASE:
Counsel for Debtors in Possession

CURRENT APPLICATION
Fees Requested: \$ 38,164.00
Expenses Requested: \$ 8,187.83

FEE APPLICATION (ANALYSIS BY PROFESSIONAL)

<u>PROFESSIONAL</u>	<u>HOURS</u>	<u>RATE</u>	<u>FEE</u>
Joseph F. Postnikoff	169.60	\$175.00	\$ 29,380.00
Kevin G. Herd	2.30	\$100.00	\$ 230.00
Christopher J. Burr	91.10	\$ 90.00	\$ 8,199.00
Annie Koonce	<u>1.10</u>	\$ 50.00	<u>\$ 55.00</u>
Totals:	264.10		\$ 38,164.00
Average Hourly Rate:		\$144.51	

RECAPITULATION

FINAL FEES & EXPENSES:	\$46,351.83
INTERIM FEES & EXPENSES:	\$54,989.25
LESS ADVANCES RECOUPED	\$ 3,745.00
LESS RETAINER APPLIED:	<u>\$21,399.60</u>
BALANCE DUE:	\$76,196.48

Goodrich, Postnikoff & Albertson

EXHIBIT